Remarks/Arguments

Applicants have received and carefully reviewed the Final Office Action of the Examiner mailed April 27, 2007. Currently, claims 1-4 and 6-25 remain pending. Claims 1, 4, 6-14, 16-22, 24, and 25 have been rejected. Claims 2, 3, and 23 are objected to. Claim 15 is allowed. Favorable consideration of the following remarks is respectfully requested.

Claim Rejections – 35 USC § 102

On page 2 of the Final Office Action, claims 1, 4, 6-14, 21, 22, 24, and 25 were rejected under 35 U.S.C. 102(b) as being anticipated by Tsugita (U.S. Patent No. 6,168,579). After careful review, Applicant must respectfully traverse this rejection.

Turning to claim 1, which recites:

> 1. (Previously Presented) A filter delivery catheter, comprising:
>
> an elongated shaft defining a shaft lumen, the shaft having a proximal end and a distal end;
>
> the elongated shaft including one or more aspiration ports;
>
> the one or more aspiration ports located circumferentially on the elongated shaft at one or more longitudinal positions proximal of the distal end; and
>
> a blood permeable filtration device for trapping debris within the lumen of a blood vessel, the filtration device having an expanded configuration and a collapsed configuration, the filtration device in its collapsed configuration being sized to fit within the shaft lumen;
>
> wherein at least one of the one or more aspiration ports is located proximally of the filtration device when the filtration device is contained within the shaft lumen.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). (MPEP § 2131). As such, Tsugita must teach each and every element in as complete of detail as is contained in claim 1. Nowhere does Tsugita appear to teach, "wherein at least one of the one or more aspiration ports is located proximally of

the filtration device when the filtration device is contained within the shaft lumen", as recited in claim 1.

The Final Office Action states, "Port 70 although noted as being used to allow infusion of blood, could be used for aspiration." Applicant must respectfully disagree. Instead, Tsugita teaches, "[p]ort 70 allows fluid intake and blood to flow from the proximal side of the occlusion balloon and exit distal port 35 of the catheter to provide perfusion to distal organs during an endovascular procedure." (Column 9, lines 22-25). In this configuration, it does not appear that port 70 could be an aspiration port. Aspiration typically includes a suction force to facilitate the entry of debris into an aspiration port and through an aspiration lumen. It does not appear that port 70 could both provide fluid and blood flow through the lumen to the distal end of the catheter as well as provide aspiration through the lumen. Therefore, it does not appear that port 70 teaches or suggests an aspiration port.

Furthermore, aspiration ports are generally provided proximate to or downstream from the plaque to facilitate the entry of debris from the plaque into the aspiration port. Not only is port 70 upstream from the location of the plaque, port 70 is separated from the plaque by the balloon. Accordingly, it does not appear that any debris would enter port 70 even if it was capable of providing aspiration. Thus, Tsugita does not appear to teach or suggest port 70 as an aspiration port.

Moreover, Tsugita teaches, "guiding catheter may include aspiration port(s) distal to the occlusion balloon for aspirating vascular debris generated during the endovascular procedure". (Column 9, lines 29-32). However, nowhere does Tsugita appear to teach or suggest the aspiration port(s) located proximally of the filtration device when the filtration device is contained within the shaft lumen, as recited in claim 1. Furthermore, it appears that when the filter is contained within the shaft lumen, the aspiration port(s) distal of the occlusion balloon would not be located proximally of the filter.

Therefore, for at least these reasons, claim 1 is believed to be not anticipated by Tsugita and Applicant respectfully requests withdrawal of the rejection. Additionally, for similar reasons given above, as well as others, claims 4, 6-14, and 21-22, which depend from claim 1 and include significant additional limitations, are believed to be not anticipated by Tsugita and Applicant respectfully requests withdrawal of the rejection.

Turning to claim 20, which recites:

20. (Previously Presented) A method for retrieving a debris laden blood permeable filtration device from within the vasculature, said method comprising the steps of:

providing a filter retrieval catheter comprising an elongated shaft with an aspiration lumen therethrough and having a proximal end and a distal end, the filter retrieval catheter further comprising a wire lumen having a proximal end and a distal end, the proximal end of said wire lumen fixedly attached, at least in part, to the distal end of said elongated shaft and fluidly coupling the distal end of the aspiration lumen to the wire lumen while maintaining fluid communication between the lumen of the blood vessel and through the wire lumen;

disposing a wire through the wire lumen of the filter retrieval catheter, positioning said retrieval catheter within the lumen of the blood vessel proximate proximal side of the emboli laden blood permeable filtration device;

applying suction at the proximal end of the filter retrieval catheter thereby extracting debris trapped within the filtration device; and

collapsing the filtration device into a low profile state and extracting said filtration device and said filter retrieval catheter from the lumen of the blood vessel.

Nowhere does Tsugita appear to teach or disclose, "providing a filter retrieval catheter comprising an elongated shaft with an aspiration lumen therethrough and having a proximal end and a distal end, the filter retrieval catheter further comprising a wire lumen having a proximal end and a distal end, the proximal end of said wire lumen fixedly attached, at least in part, to the distal end of said elongated shaft and fluidly coupling the distal end of the aspiration lumen to the wire lumen while maintaining fluid communication between the lumen of the blood vessel and through the wire lumen". Therefore, for at least this reason, claim 20 is believed to be not anticipated by Tsugita and Applicant respectfully requests withdrawal of the rejection.

Turning to claim 24, which recites:

24. (Previously Presented) A filter delivery catheter, comprising:

an elongated shaft defining a shaft lumen, the shaft having a proximal end and a distal end;

the elongated shaft including one or more aspiration ports;

the one or more aspiration ports located circumferentially on the elongated shaft at one or more longitudinal positions proximal of the distal end; and

a blood permeable filtration device for trapping debris within the lumen of a blood vessel, the filtration device having an expanded configuration and a collapsed configuration, the filtration device in its collapsed configuration being sized to fit within the shaft lumen; and

wherein the filtration device has a first length in its collapsed configuration, and wherein at least one of the one or more aspiration ports is located at least a second length from the distal end of the elongated shaft, the second length being greater than the first length.

For similar reasons given above, as well as others, claim 24 is believed to be not anticipated by Tsugita and Applicant respectfully requests withdrawal of the rejection. Additionally, for similar reasons given above, as well as others, claim 25, which depends from claim 24 and includes significant additional limitations, is believed to be not anticipated by Tsugita and Applicant respectfully requests withdrawal of the rejection.

Claim Rejections – 35 USC § 103

On page 3 of the Final Office Action, claims 16-20 were rejected under 35 U.S.C. 103(a) as being unpatentable over Tsugita in view of Rosenbluth (U.S. Patent No. 6,511,492). After careful review, Applicant must respectfully traverse this rejection.

Turning to claim 16, which recites:

16. (Original) A filter retrieval catheter, comprising:

an elongated shaft having a proximal end and a distal end, and having an inflation lumen, an aspiration lumen and a wire lumen;

a balloon disposed about a region of the elongated shaft proximate the distal end of the elongated shaft, the balloon being in fluid communication with the inflation lumen; and

a wire disposed in the wire lumen and having a blood permeable filtration device disposed thereon.

To establish a *prima facie* case of obviousness, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). (MPEP § 2143.01). Applicant respectfully asserts that the modification of

Tsugita to include the short guidewire lumen of Rosenbluth would render Tsugita unsatisfactory for its intended purpose.

Tsugita appears to teach, "[a] filter flush system for temporary placement of a filter in an artery or vein is disclosed. The system typically includes a guidewire insertable within a guiding catheter, which has an occlusion balloon disposed about its distal end. The guidewire has an expandable filter, which can be collapsed to pass through a lumen and distal port of the guiding catheter. The lumen is adapted to receive a variety of endovascular devices, including angioplasty, atherectomy, and stenting catheters." (Abstract). In particular, Figure 2B shows an atherectomy catheter 40, having an atherectomy device 42 mounted on a distal region, is inserted within lumen 33 of the catheter and over guidewire 10. (See column 6, lines 34-41). Additionally, Figure 3B shows an angioplasty catheter 50, which has angioplasty balloon 52 mounted on a distal region, is inserted through lumen 33 of the guiding catheter over guidewire 10. (See column 8, lines 4-11).

The modification of Tsugita to include the short guidewire lumen of Rosenbluth would appear to prevent any catheters, such as the atherectomy catheter 40 or the angioplasty catheter 50, to be inserted through the lumen of the catheter over the guidewire. As such, the proposed modification would appear to render Tsugita unsatisfactory for its intended purpose. Therefore, for at least this reason, claim 16 is believed to be patentable over Tsugita in view of Rosenbluth and Applicant respectfully requests withdrawal of the rejection. Additionally, for similar reasons, as well as others, claims 17-19, which depend from claim 16 and include significant additional limitations, are believed to be patentable over Tsugita in view of Rosenbluth and Applicant respectfully requests withdrawal of the rejection.

In view of the foregoing, all pending claims are believed to be in a condition for allowance. Reexamination and reconsideration are respectfully requested. Issuance of a Notice of Allowance in due course is anticipated. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

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By his Attorney,

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